

1 Hon. Ronald B. Leighton
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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

7 KRISTINE M. NEIDINGER,) NO. C10-5702-RBL
8 Plaintiff,)
9 v.) PLTAINTIFF'S PROPOSED
10) JURY INSTRUCTIONS
11 ELIZABETH WYATT EARP; RICHARD)
12 D. MALIDORE and LOIS K. MALIDORE)
and the marital community thereof; and)
13 JAMES PATRICK WILLIAMS and)
REBEKAH J. WILLIAMS and the marital)
community thereof,)
14 Defendants.)
15)

16 DATED this ____ day of _____, 2012.
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19 Christopher Taylor, WSBA # 38413
20 Attorney for Plaintiff
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Number	Title	Source	Page No.	Party
23	Particular Rights – Fourth Amendment – Unreasonable Seizure of Person – Excessive Force	9 th Cir. 9.22, <i>Headwaters Forest Defense v. County of Humboldt</i>	4	Plaintiff
24	Severity of Crime of Malicious Mischief	TMC 8.44.130; RCW 9A.48.090, 9.94A.030(33), (54), 10.99.020	5	Plaintiff
25	Integral Participation	<i>Boyd v. Benton County</i>	6	Plaintiff

1 [Plaintiff's Proposed] Instruction No. 23

2 PARTICULAR RIGHTS – FOURTH AMENDMENT – UNREASONABLE SEIZURE OF
3 PERSON – EXCESSIVE FORCE

4 In general, a seizure of a person is unreasonable under the Fourth Amendment if a corrections
5 officer uses excessive force in restraining another, or in defending himself, herself, or others.
6 Thus, in order to prove an unreasonable seizure in this case, the plaintiff must prove by a
7 preponderance of the evidence that the officers used excessive force when they used force upon
8 plaintiff in placing her in restraints while in the individual booking cell.

9 Under the Fourth Amendment, a corrections officer may use only such force as is “objectively
10 reasonable” under all of the circumstances. In other words, you must judge the reasonableness
11 of a particular use of force from the perspective of a reasonable officer on the scene and not
12 with the 20/20 vision of hindsight.

13 In determining whether the officers used excessive force in this case, consider all of the
14 circumstances known to the officers on the scene, including:

- 11 1. The severity of the crime or other circumstances to which the officers were responding;
- 12 2. Whether the plaintiff posed an immediate threat to the safety of the officers or to others;
- 13 3. Whether the plaintiff was actively resisting *continued detention* or attempting to evade
continued detention by flight;
- 14 4. The amount of time and any changing circumstances during which the officer had to
determine the type and amount of force that appeared to be necessary;
- 15 5. The type and amount of force used;
- 16 6. The availability of alternative methods to subdue the plaintiff; and
- 17 7. *Whether the plaintiff posed an immediate threat to the safety of herself.*

20 *Where there is no need for force, any force used is constitutionally unreasonable.*

21 9th Circuit Model Civil Jury Instruction 9.22 (2007).

22 *Headwaters Forest Defense v. County of Humboldt*, 240 F.3d 1185, 1199 (9th Cir. 2000).

1 [Plaintiff's Proposed] Instruction No. 24

2 SEVERITY OF CRIME OF MALICIOUS MISCHIEF

3 Malicious mischief in the third degree, domestic violence is a nonviolent misdemeanor.

4 TMC 8.44.130; RCW 9A.48.090, 9.94A.030(33), (54), 10.99.020.

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1 [Plaintiff's Proposed] Instruction No. 25

2 INTEGRAL PARTICIPATION

3 Even if an officer's actions do not independently constitute excessive force, that officer may be
4 liable for excessive force used against another person if that officer was an integral participant
5 to that use of force. An officer is an integral participant if he participated in some meaningful
way in that use of force, was aware of the force to be used, and did not object to it.

6 *Boyd v. Benton County*, 374 F.3d 773 (9th Cir. 2004).

CERTIFICATE OF SERVICE

I hereby certify that on September 7, 2012 I electronically filed the foregoing PLAINTIFF'S PROPOSED JURY INSTRUCTIONS with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Michelle Luna-Green, Attorney for Defendants at mluna@co.pierce.wa.us

DATED this 7th day of September, 2012.

/s/ Christopher Taylor
Christopher Taylor
Attorney for Plaintiff
Washington State Bar Number 38413
email: taylor@ftlawps.com